

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

PHILLIP NELSON BURNS, MIRJANA
PAVKOVICH, Administrator of the Estate of
Rade Pavkovich, Deceased, and WARREN
ELMER HALPAP,

Plaintiffs,

Case No. 1:07-CV-3496 (WHP)

-against-

GRUPO MEXICO, S.A. de C.V., a Mexican
Corporation,

Defendant.

**ASARCO LLC AND SOUTHERN PERU HOLDINGS, LLC'S
AMENDED NOTICE OF REMOVAL**

Real-parties-in-interest ASARCO LLC, formerly known as ASARCO, Inc. ("ASARCO"), and Southern Peru Holdings, LLC, formerly known as Southern Peru Holdings Corporation ("Southern Peru Holdings"), file this Amended Notice of Removal. Through this Notice, ASARCO and Southern Peru Holdings remove the claims relating to the fraudulent transfer of ASARCO's 54.2% ownership interest in Southern Peru Copper Corporation, now known as Southern Peru Corporation ("SPCC"). This fraudulent transfer was made by ASARCO and Southern Peru Holdings to ASARCO's parent, Americas Mining Corporation ("AMC"), the wholly owned subsidiary of Grupo Mexico, S.A. de C.V. ("Grupo Mexico"), on or about March 31, 2003. The claims ASARCO and Southern Peru Holdings are removing to this Court are those asserted against Grupo Mexico in Plaintiffs' First, Second, Third, Fourth, and Seventh Claims for Relief in the First Amended Verified Complaint filed in *Phillip Nelson Burns et al. vs. Grupo Mexico S.A. de C.V. et al.*, Index No. 0114728/2004, in the Supreme Court of the State of New York, County of New York (the "State Court Amended Complaint"). In

support of this removal, ASARCO and Southern Peru Holdings state as follows:

REMOVAL BASED ON BANKRUPTCY COURT JURISDICTION

1. Removal of the claims relating to the fraudulent transfer of ASARCO's 54.2% ownership interest in SPCC to AMC asserted against Grupo Mexico in Plaintiffs' First, Second, Third, Fourth, and Seventh Claims for Relief in the State Court Amended Complaint is proper under 28 U.S.C. § 1452(a) because this Court has subject matter jurisdiction over those claims pursuant to 28 U.S.C. § 1334(b).

2. On or about October 15, 2004, Plaintiffs Phillip Nelson Burns, Mirjana Pavkovich, and Warren Elmer Halpap filed an action in the Supreme Court of the State of New York, County of New York, against various defendants, including Grupo Mexico. The action was captioned *Phillip Nelson Burns et al. vs. Grupo Mexico S.A. de C.V. et al.*, Index No. 0114728/2004, and was assigned to the Honorable Bernard J. Fried (the "State Court Action").

3. On or about February 7, 2005, Plaintiffs filed the State Court Amended Complaint, a copy of which is attached to this Notice as Exhibit 1. Plaintiffs' First, Second, Third, Fourth, and Seventh Claims for Relief in the State Court Amended Complaint allege, among other things, that the transfer of ASARCO's 54.2% ownership interest in SPCC to AMC was fraudulent, and that Plaintiffs are entitled to judgment against Grupo Mexico. Exhibit 1, at ¶¶ 58-59, 64, 66-67, 70-81, 104-09.

4. On July 1, 2005, Grupo Mexico was served with the State Court Amended Complaint.

5. On August 9, 2005, ASARCO commenced its bankruptcy case in the United States Bankruptcy Court for the Southern District of Texas, Corpus Christi Division (the "Bankruptcy Court"), by filing a voluntary petition for relief under chapter 11 of title 11 of the

United States Code (the “Bankruptcy Code”). A copy of ASARCO’s petition for relief is attached to this Notice as Exhibit 2. ASARCO’s bankruptcy case is styled *In re ASARCO LLC*, et al., Case No. 05-21207.

6. Upon ASARCO’s bankruptcy filing, the claims asserted in the State Court Action, including the claims relating to the fraudulent transfer of ASARCO’s 54.2% ownership interest in SPCC to AMC asserted against Grupo Mexico in Plaintiffs’ First, Second, Third, Fourth, and Seventh Claims for Relief in the State Court Amended Complaint, became property of the ASARCO bankruptcy estate pursuant to section 541 of the Bankruptcy Code, and the State Court Action’s continued prosecution was automatically stayed pursuant to section 362(a) of the Bankruptcy Code.

7. On December 12, 2006, Southern Peru Holdings filed in the Bankruptcy Court a voluntary petition for relief under the Bankruptcy Code. A copy of Southern Peru Holdings’ petition for relief is attached to this Notice as Exhibit 3. Southern Peru Holdings’ bankruptcy case is being jointly administered with ASARCO’s bankruptcy case.

8. The claims relating to the fraudulent transfer of ASARCO’s 54.2% ownership interest in SPCC to AMC asserted against Grupo Mexico in Plaintiffs’ First, Second, Third, Fourth, and Seventh Claims for Relief in the State Court Amended Complaint “arise under” the Bankruptcy Code. The claims also relate to ASARCO’s and Southern Peru Holdings’ jointly administered bankruptcy cases, which are cases under title 11. Accordingly, the claims are removable pursuant to 28 U.S.C. § 1452(a).

9. The allegations in the State Court Amended Complaint germane to the claims so removed are as follows: ¶¶ 1, 10-12, 23-40, 44-53, and 56-57; the allegations relating to the fraudulent transfer of ASARCO’s 54.2% ownership interest in SPCC to AMC asserted against

Grupo Mexico in ¶¶ 59, 64, 66-67, 70-81, and 104-109; and the Prayer for Relief as it relates to the fraudulent transfer of ASARCO's 54.2% ownership interest in SPCC to AMC.

10. Removal is timely under Rules 9027(a)(2) and 9006(b) of the Federal Rules of Bankruptcy Procedure and orders of the Bankruptcy Court extending the time to remove actions entered on November 1, 2005; February 7, 2006; May 8, 2006; September 22, 2006; December 26, 2006; and April 5, 2007. The most recent order extending the time for ASARCO and Southern Peru Holdings to remove actions such as the State Court Action through November 30, 2007 is attached to this Notice as Exhibit 4.

11. ASARCO and Southern Peru Holdings shall serve promptly a copy of this Amended Notice of Removal on Plaintiffs and Grupo Mexico as required by Rule 9027(b) of the Federal Rules of Bankruptcy Procedure.

12. ASARCO and Southern Peru Holdings shall file promptly a copy of this Amended Notice of Removal with the Supreme Court of the State of New York, County of New York, as required by Rule 9027(c) of the Federal Rules of Bankruptcy Procedure.

13. Upon removal, the proceeding is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). A matter is core if it invokes a substantive right provided by the Bankruptcy Code or is a proceeding that by its nature could only arise in the context of a bankruptcy case. Section 157(b)(2) provides that core proceedings include "proceedings to determine, avoid, or recover fraudulent conveyances."

14. Copies of all process, pleadings, and substantially all papers filed in the State Court Action, to the best of ASARCO's information and belief, are attached to this Notice as Exhibit 5. Copies of documents showing that service of process was made on Grupo Mexico on July 1, 2005 are attached to this Notice as Exhibit 6. Translations of certain documents in

Exhibit 6 are attached to this Notice as Exhibit 7. If additional documents relating to the State Court Action are required, ASARCO will submit such documents.

RELIEF REQUESTED

ASARCO and Southern Peru Holdings respectfully request that the claims be removed to this Court which relate to the fraudulent transfer of ASARCO's 54.2% ownership interest in SPCC to AMC asserted against Grupo Mexico in Plaintiffs' First, Second, Third, Fourth, and Seventh Claims for Relief in the State Court Amended Complaint filed in the State Court Action, *Phillip Nelson Burns et al. vs. Grupo Mexico S.A. de C.V. et al.*, Index No. 0114728/2004, all of which are now pending in the Supreme Court of the State of New York, County of New York.

Dated: June 20, 2007

Respectfully submitted,

BAKER BOTTS L.L.P.

/s/ G. Irvin Terrell, Jr.

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I certify that on June 20, 2007, the foregoing document was served via email and overnight delivery service on the following counsel:

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